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AMENDED IN ASSEMBLY APRIL 23, 2009

AMENDED IN ASSEMBLY MARCH 31, 2009

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

## ASSEMBLY BILL

**No. 68**

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**Introduced by Assembly Member Brownley**

(Principal coauthor: Senator Pavley)

**(Coauthors: Assembly Members Blumenfield, Chesbro, Feuer,  
Huffman, Krekorian, Ma, Nava, John A. Perez, and Yamada)**

(Coauthor: Senator DeSaulnier)

December 12, 2008

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An act to add Chapter 5.3 (commencing with Section 42280) to Part 3 of Division 30 of the Public Resources Code, relating to solid waste.

### LEGISLATIVE COUNSEL'S DIGEST

AB 68, as amended, Brownley. Solid waste: single-use carryout bags.

Existing law requires an operator of a store, as defined, to establish an at-store recycling program that provides to customers the opportunity to return clean plastic carryout bags to that store. Existing law imposes various requirements on at-store recycling programs, including requiring a store to maintain records describing the collection, transport, and recycling of plastic carryout bags collected by the store.

Under existing law, the ~~California Integrated Waste Management Board~~ (board) *Department of Resources Recycling and Recovery* (department) administers laws related to waste management.

This bill would, on and after July 1, ~~2010~~ 2011, prohibit a store, as defined, from providing a single-use carryout bag to a customer unless the store charges a fee of not less than \$0.25 per bag at the point of sale.

The bill would exempt certain customers from paying the fee. The bill would establish the Bag Pollution Fund in the State Treasury and would require a store to remit the single-use carryout bag fees, less a specified amount, to the State Board of Equalization for deposit in that fund. The bill would prohibit a store from distributing a single-use carryout bag that is not a plastic or compostable carryout bag that meets specific requirements.

The bill would require the ~~board~~ department to administer and enforce the single-use carryout bag provisions and would require the State Board of Equalization to administer the collection of the fees imposed on those bags.

The moneys in the fund would be required to be expended, upon appropriation by the Legislature, in a specified order of priority, by the ~~board~~ department for grants to cities and counties for programs related to single-use carryout bags and reusable bag giveaway programs, by the State Board of Equalization to reimburse its costs associated with collecting the fees, by the ~~board~~ department for purposes of implementing the above provisions, and by the ~~board~~ department, in consultation with specified state agencies, to develop and implement specified programs related to single-use carryout bags. The bill would expressly prohibit the expenditure of revenues from the fund for activities unrelated to the prevention or reduction of single-use bag pollution.

The bill would require the ~~board~~ department, on or before January 1, 2013 2014, to submit to the Legislature a report regarding the effectiveness of the above provisions and recommendations to further encourage the use of reusable bags.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. The Legislature finds and declares all of the
- 2 following:
- 3 (a) Single-use carryout bags provided by stores impose hidden
- 4 costs on consumers, local governments, the state, taxpayers, and
- 5 the environment.
- 6 (b) Litter from plastic carryout bags poses a significant burden
- 7 to California's economy and a serious threat to our marine
- 8 ecosystem. It is estimated that Californians consume 19 billion

1 plastic carryout bags per year. However, according to the *former*  
2 California Integrated Waste Management Board, the recycling rate  
3 for these bags is less than five percent and it currently costs the  
4 state twenty-five million dollars (\$25,000,000) annually to landfill  
5 discarded plastic bags. Public agencies in California also spend  
6 more than three hundred million dollars (\$300,000,000) annually  
7 in litter cleanup.

8 (c) Despite past efforts to control ocean litter, the quantity of  
9 trash in the coastal and ocean environment is increasing  
10 dramatically worldwide. It is estimated that 60 to 80 percent of all  
11 marine debris, and 90 percent of floating debris, is plastic. It may  
12 take hundreds of years for this plastic to break down and some  
13 plastics never truly biodegrade in the marine environment. Streams  
14 and storm drains carry plastic bags to the ocean where they are  
15 frequently mistaken as food by marine life. Over 267 species  
16 worldwide have been impacted by plastic litter such as plastic bags  
17 through entanglement or ingestion.

18 (d) Imposing a fee on carryout bags has proven successful in  
19 significantly reducing the number of single-use carryout bags.  
20 Since 2002, Ireland has implemented a twenty-two euro-cent  
21 (€0.22) levy, which is equivalent to thirty-three cents (\$0.33), on  
22 single-use plastic bags and reported a significant decrease in  
23 consumer use and pollution from carryout bags by over 90 percent.  
24 The levy has generated more than one hundred seventeen million  
25 euros (€17,000,000), which is equivalent to one hundred fifty  
26 million dollars (\$150,000,000), to support waste reduction and  
27 prevention programs, promote environmentally friendly products,  
28 implement local waste management plans, and implement  
29 environmental education and awareness initiatives.

30 (e) Paper bags made from virgin materials are not sustainable  
31 alternatives to plastic carryout bags because the production of these  
32 types of bags contributes to deforestation, natural resource  
33 depletion, greenhouse gas emissions, and additional waterborne  
34 wastes. Paper carryout bags that contain no old-growth fiber are  
35 100 percent recyclable and contain a minimum of 40 percent  
36 postconsumer recycled content have fewer negative impacts than  
37 virgin paper bags.

38 (f) Plastics made from biobased sources that are marketed as  
39 “compostable” or “biodegradable” have not been shown to degrade  
40 in aquatic environments and require conditions only available in

1 composting facilities to rapidly break down into constituents that  
2 assimilate back into the environment. With the exception of the  
3 City and County of San Francisco, the City of Oakland, and a few  
4 other communities, these composting facilities are not typically  
5 available to local jurisdictions and compostable plastic in  
6 communities without commercial composting would be disposed  
7 of as waste.

8 (g) On February 8, 2007, the Ocean Protection Council adopted  
9 a comprehensive resolution to reduce marine debris by targeting  
10 specific actions on single-use plastic packaging. On November  
11 20, 2008, the Ocean Protection Council adopted a final  
12 implementation strategy for that resolution that includes a  
13 legislative recommendation to charge consumers a fee on all  
14 single-use plastic and paper carryout bags as an incentive for  
15 consumers to switch to reusable bags. The Ocean Protection  
16 Council further recommended that fees on commonly littered items,  
17 such as single-use bags, should fund litter abatement, stormwater  
18 capture, and litter prevention and outreach programs to reduce the  
19 incidence of marine debris.

20 (h) Requiring stores to end the subsidy of single-use carryout  
21 bags and charge their full economic and environmental costs will  
22 provide consumers with an appropriate market signal to make  
23 informed decisions regarding carryout bag reduction and will  
24 encourage consumers to opt for reusable bags.

25 (i) Requiring stores to charge and remit a fee for the distribution  
26 of single-use carryout bags will help the state and local  
27 governments to offset the environmental and social costs of  
28 single-use carryout bags.

29 (j) There is a need for a long-term shift away from litter control  
30 and waste management and towards pollution prevention and  
31 sustainable materials in the development of consumer products.

32 (k) Green chemistry, material science, and sustainable design  
33 offer a new approach to solving environmental damage caused by  
34 single-use carryout bags.

35 (l) The imposition of the fees pursuant to Section 42281 of the  
36 Public Resources Code would not result in the imposition of a tax  
37 within the meaning of Article XIII A of the California Constitution  
38 because the amount and nature of the fee have a fair and reasonable  
39 relationship to the environmental, public health, and societal  
40 burdens imposed by the use of single-use carryout bags, and there

1 is a sufficient nexus between the fees imposed and the use of those  
2 fees to support programs to prevent the litter of single-use carryout  
3 bags, to clean up the litter caused by single-use carryout bags, and  
4 to encourage the reduction of the use of single-use carryout bags.

5 (m) (1) There is a clear nexus between the type and amount of  
6 the fees imposed pursuant to this act and the environmental, public  
7 health, and societal costs resulting from single-use carryout bags.

8 (2) It is the intent of the Legislature that the fees that are  
9 imposed pursuant to Section 42281 of the Public Resources Code  
10 be consistent with *Sinclair Paint Co. v. State Bd. of Equalization*  
11 (1997) 15 Cal.4th 866.

12 SEC. 2. Chapter 5.3 (commencing with Section 42280) is added  
13 to Part 3 of Division 30 of the Public Resources Code, to read:

14  
15 CHAPTER 5.3. SINGLE-USE CARRYOUT BAGS

16  
17 Article 1. Definitions

18  
19 42280. For purposes of this chapter, the following definitions  
20 shall apply:

21 (a) “Bag Pollution Cleanup Fee” means the fee imposed pursuant  
22 to Section 42281.

23 ~~(b) “Board” means the California Integrated Waste Management~~  
24 ~~Board.~~

25 ~~(c)~~  
26 ~~(b) “Compostable carryout bag” means a carryout bag provided~~  
27 ~~by a store to a customer at point of sale that meets both of the~~  
28 ~~following requirements:~~

29 ~~(1) Is derived from 100 percent biobased sources containing no~~  
30 ~~products derived from genetically modified feedstocks.~~

31 ~~(2) Meets by a store to a customer at a point of sale that meets~~  
32 ~~the American Society for Testing and Materials (ASTM) Standard~~  
33 ~~Specification for Compostable Plastics as specified in subparagraph~~  
34 ~~(A) of paragraph (1) of subdivision (b) of Section 42356.~~

35 ~~(c) “Department” means the Department of Resources Recycling~~  
36 ~~and Recovery.~~

37 (d) “Fund” means the Bag Pollution Fund established pursuant  
38 to subdivision (a) of Section 42285.

(e) “Paper carryout bag” means a carryout bag provided by a store to a customer at point of sale that meets all of the following requirements:

- (1) Contains no old-growth fiber.
- (2) Is 100 percent recyclable.
- (3) Contains a minimum of 40 percent postconsumer recycled content.

(f) “Plastic carryout bag” means a plastic bag designed for single use that is provided by a store to a customer at the point of sale.

(g) “Reusable bag” means a bag that is specifically designed and manufactured for multiple reuse, meaning 50 or more uses.

(h) “State board” means the State Board of Equalization.

(i) “Store” means a retail establishment that provides paper, compostable, or plastic carryout bags to its customers as a result of the sale of a product and that meets any of the following requirements:

- (1) Meets the definition of a “supermarket” in Section 14526.5.
- (2) Has over 10,000 square feet of retail space that generates sales or use tax pursuant to the Bradley-Burns Uniform Local Sales and Use Tax Law (Part 1.5 (commencing with Section 7200) of Division 2 of the Revenue and Taxation Code) and has a pharmacy licensed pursuant to Chapter 9 (commencing with Section 4000) of Division 2 of the Business and Professions Code.
- (3) Is a chain convenience food store or foodmart primarily engaged in retailing a limited line of goods that generally includes milk, bread, soda, and snacks, and has a total cumulative square footage of 10,000 square feet or more.

## Article 2. Bag Pollution Cleanup Fee

42281. (a) Except as provided in Section 42283, on and after July 1, ~~2010~~ 2011, a store shall not provide a single-use carryout bag to a customer at the point of sale, unless the store charges the customer not less than twenty-five cents (\$0.25) per bag.

(b) A store shall only distribute reusable bags, or single-use carryout bags that are paper, compostable, or plastic carryout bags.

(c) The amount charged pursuant to subdivision (a) shall not be subject to sales tax, shall be separately stated on the receipt provided to the customer at the time of sale, and shall be identified as the Bag Pollution Cleanup Fee.

1 (d) (1) A store charging a fee pursuant to subdivision (a) may  
2 retain a portion of the fee, as specified in paragraph (2), in an  
3 amount necessary to reimburse the store's costs associated with  
4 complying with this chapter, in accordance with Section 42284.5.  
5 The store shall remit the remainder of the fee to the state board  
6 pursuant to Section 42284.

7 (2) A store may retain not more than five cents (\$0.05) of the  
8 fee for each plastic or compostable carryout bag. A store may  
9 retain not more than ten cents (\$0.10) of the fee for each *paper*  
10 *carryout* bag.

11 (e) Any other transaction fee charged by a store in relation to  
12 providing a single-use carryout bag shall be identified separately  
13 from the Bag Pollution Cleanup Fee.

14 42283. The fee imposed pursuant to Section 42281 shall not  
15 be charged to either of the following:

16 (a) A customer participating in the California Special  
17 Supplemental Food Program for Women, Infants, and Children  
18 (Article 2 (commencing with Section 123275) of Chapter 1 of Part  
19 2 of Division 106 of the Health and Safety Code).

20 (b) A customer participating in the State Department of Social  
21 Services Food Stamp Program.

22 42284. A store that collects the Bag Pollution Cleanup Fee  
23 pursuant to Section 42281 shall calculate the amount of money  
24 collected and, after deducting the amount specified in ~~subdivision~~  
25 ~~(e) paragraph (2) of subdivision (d)~~ of Section 42281, shall, in  
26 accordance with Section 42288, remit the remainder to the state  
27 board for deposit into the fund.

28 42284.5. A store charging a fee pursuant to Section 42281 shall  
29 use the amount of the fee retained pursuant to ~~subdivision (e)~~  
30 ~~paragraph (2) of subdivision (d)~~ of Section 42281 for all of the  
31 following:

32 (a) Reimbursement of the store's costs associated with the  
33 collection and remittance of the fee pursuant to Sections 42281  
34 and 42284.

35 (b) The development of in-store educational materials for  
36 distribution to customers encouraging the use of reusable bags.

37 (c) The development and implementation of an educational  
38 campaign encouraging the use of reusable bags, including, but not  
39 limited to, public service announcements.

1 (d) Reimbursement of the store's costs associated with providing  
2 reusable bags to customers participating in programs described in  
3 Section 42283.

4 (e) Reimbursement of the store's costs associated with providing  
5 reusable bags as donations to community organizations, nonprofit  
6 organizations, and other similar entities.

7 (f) Reimbursement of the store's costs associated with the  
8 purchase of plastic, compostable, and paper carryout bags.

9 42285. (a) The Bag Pollution Fund is hereby established in  
10 the State Treasury. All fees collected by the state board pursuant  
11 to this chapter shall be deposited in the fund.

12 (b) The moneys in the fund shall be expended, upon  
13 appropriation by the Legislature in the annual Budget Act, in the  
14 manner and in the order of priority as follows:

15 (1) (A) By the ~~board~~ department, 80 percent of the moneys in  
16 the fund, for grants to cities and counties, on a per capita basis,  
17 for the following purposes:

18 (i) Establishing and maintaining local programs to control  
19 pollution from single-use carryout bags, including those programs  
20 in partnership with nonprofit community-based organizations, for  
21 purposes of litter cleanup activities.

22 (ii) Source reduction efforts to help implement zero waste  
23 programs, litter prevention programs, and litter prevention  
24 education and outreach programs related to single-use carryout  
25 bags.

26 (iii) Mitigation projects relating to stormwater pollution caused  
27 by single-use carryout bags, including devices to prevent single-use  
28 carryout bag litter from entering storm drain systems.

29 (iv) Reusable bag giveaway programs, including those targeting  
30 low-income residents.

31 (B) Except as provided in subparagraph (C), the amount for  
32 which a city or a county is eligible shall be based on the total  
33 population of the incorporated area of the city or the total  
34 unincorporated area of the county, whichever is applicable.

35 (C) If a city or county prohibits the use of all single-use carryout  
36 bags, including plastic, paper, and compostable carryout bags, and  
37 no fees are collected pursuant to Section 42281 within that  
38 jurisdiction, that city or county shall not be eligible for grant funds  
39 pursuant to this paragraph.



1 (2) No more than 3 percent of the funds shall be expended by  
2 the state board, to reimburse the state board's costs of administering  
3 Section 42288.

4 (3) No more than 3 percent shall be expended by the ~~board~~  
5 *department* for purposes of administering the requirements of this  
6 chapter.

7 (4) The remainder of the moneys in the funds shall be allocated  
8 on an equal basis to the ~~board~~ *department*, the State Water  
9 Resources Control Board, the Department of Toxic Substances  
10 Control, and the Ocean Protection Council for the purposes of  
11 Sections 42287 and 42287.1.

12 (c) The revenue from the Bag Pollution Cleanup Fund for the  
13 purposes of this section shall not be expended on activities  
14 unrelated to the prevention or reduction of single-use carryout bag  
15 pollution pursuant to *Sinclair Paint Co. v. State Bd. of Equalization*  
16 (1997) 15 Cal.4th 866.

17 42286. (a) The Legislature finds and declares that imposing  
18 a single-use carryout bag fee upon a store is a matter of statewide  
19 interest and concern.

20 (b) Unless expressly authorized by this chapter, a city, county,  
21 or other public agency shall not adopt, implement, or enforce an  
22 ordinance, resolution, regulation, or rule to impose a single-use  
23 carryout bag fee upon a store that is subject to this chapter.

24 (c) This chapter does not preempt a city or county from  
25 prohibiting the use, import, sale, or distribution of any plastic,  
26 paper, or compostable carryout bag.

27  
28 Article 3. Program and Report  
29

30 42287. The ~~board~~ *department* shall, in consultation with the  
31 Ocean Protection Council, the State Water Resources Control  
32 Board, and the Department of Toxic Substances Control, develop  
33 and implement programs to encourage and support pollution  
34 prevention, abatement, cleanup, enforcement, green chemistry and  
35 product design, water quality protection and cleanup, and  
36 environmental and public education and outreach related to the  
37 use of single-use carryout bags.

38 42287.1. On or before January 1, ~~2013, the board~~ 2014, the  
39 *department* shall submit a report to the Legislature regarding the  
40 effectiveness of this chapter. The report shall also include

1 recommendations to further encourage the use of reusable bags  
2 by consumers and retailers and to reduce the consumption of  
3 single-use carryout bags, including at a minimum, both of the  
4 following:

5 (a) Expanding the definition of stores that are subject to this  
6 chapter to all other stores and retail establishments distributing  
7 ~~single-use bags, including the retail establishments specified in~~  
8 ~~subdivision (b) of Section 42251.~~ *single-use bags.*

9 (b) Increasing the fee imposed pursuant to Section 42281,  
10 including necessary adjustments for inflation, to increase the  
11 effectiveness of this chapter.

#### 12 Article 4. Administration and Enforcement

13 42288. (a) The state board shall administer and collect the Bag  
14 Pollution Cleanup Fee pursuant to the Fee Collection Procedures  
15 Law (Part 30 (commencing with Section 55001) of Division 2 of  
16 the Revenue and Taxation Code).

17 (b) The state board may adopt rules and regulations to carry out  
18 this article, including, but not limited to, provisions governing  
19 collections, reporting, refunds, and appeals.

20 (c) The Bag Pollution Cleanup Fee shall be due and payable  
21 quarterly on or before the 25th day of the month following each  
22 calendar quarter. Payments shall be accompanied by a form, as  
23 prescribed by the state board, including, but not limited to,  
24 electronic media.

25 (d) The state board may require the payment of the fee for other  
26 than quarterly periods.

27 42288.5. Except as otherwise provided by this chapter, the  
28 ~~board~~ *department* shall administer and enforce this chapter.  
29  
30